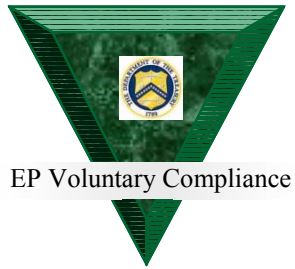




EP Voluntary Compliance

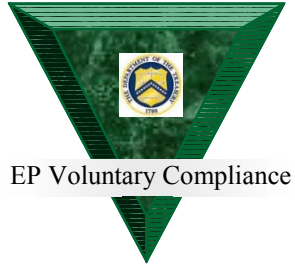
Internal Revenue Service

Employee Plans Compliance
Resolution System (“EPCRS”)



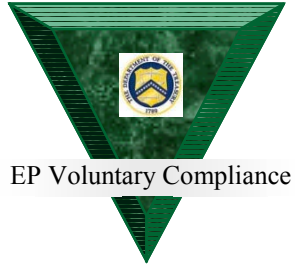
Employee Plans Compliance Resolution System (“EPCRS”)

- **Comprehensive system of correction programs that permits sponsors of Qualified Plans, 403(b) Plans, and Simplified Employee Pensions (“SEPs”) to correct eligible failures and to continue providing their employees with retirement benefits on a tax-favored basis**
- **EP is soliciting comments regarding correction procedures for failures arising under SIMPLE IRAs and 457(b) eligible governmental plans**



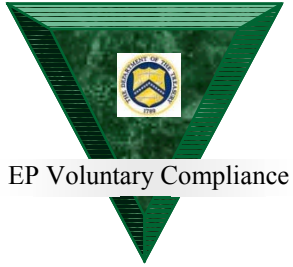
Eligible Plans

- **Qualified Plan - a plan intended to satisfy the requirements of Internal Revenue Code (“Code”) section 401(a) or 403(a)**
- **403(b) Plan - a plan or program intended to satisfy the requirements of Code section 403(b)**
- **SEP - a plan intended to satisfy the requirements of Code section 408(k), including a salary reduction SEP described in Code section 408(k)(6)**



Qualification Failure – General Definition

**Any failure that adversely affects the
qualification of a plan under Code section
401(a)**



Types of Qualification Failures

- 1. Plan Document Failure - A provision (or the absence of a provision) within the plan's written document that violates Code section 401(a)**
- 2. Operational Failure - A problem that arises when a plan is not administered in accordance with its written terms**
- 3. Demographic Failure - A violation of the nondiscrimination and/or the participation and coverage requirements of Code sections 401(a)(4), 401(a)(26), and/or 410(b)**
- 4. Employer Eligibility Failure - The adoption of a 401(k) plan by any ineligible employer**



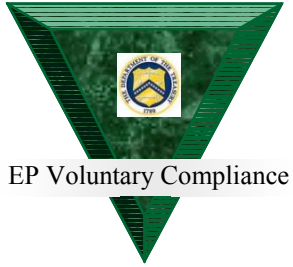
403(b) and SEP Failures

- **403(b) Failure - Any Operational, Demographic, or Employer Eligibility Failure, as those terms are defined in section 5.02(2) of Revenue Procedure 2002-47**
- **SEP Failure - Generally, a failure to satisfy the requirements of Code section 408(k)**



Basic Elements of EPCRS

- **Self-correction of failures - generally does not require Service approval or the payment of any fee/sanction**
- **Voluntary correction of failures - requires Service approval and the payment of a fee**
- **Correction of failures identified on audit - requires Service approval and the payment of a negotiated sanction**



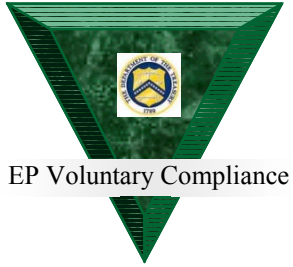
Structure of EPCRS

Employee Plans Compliance Resolution System ("EPCRS")

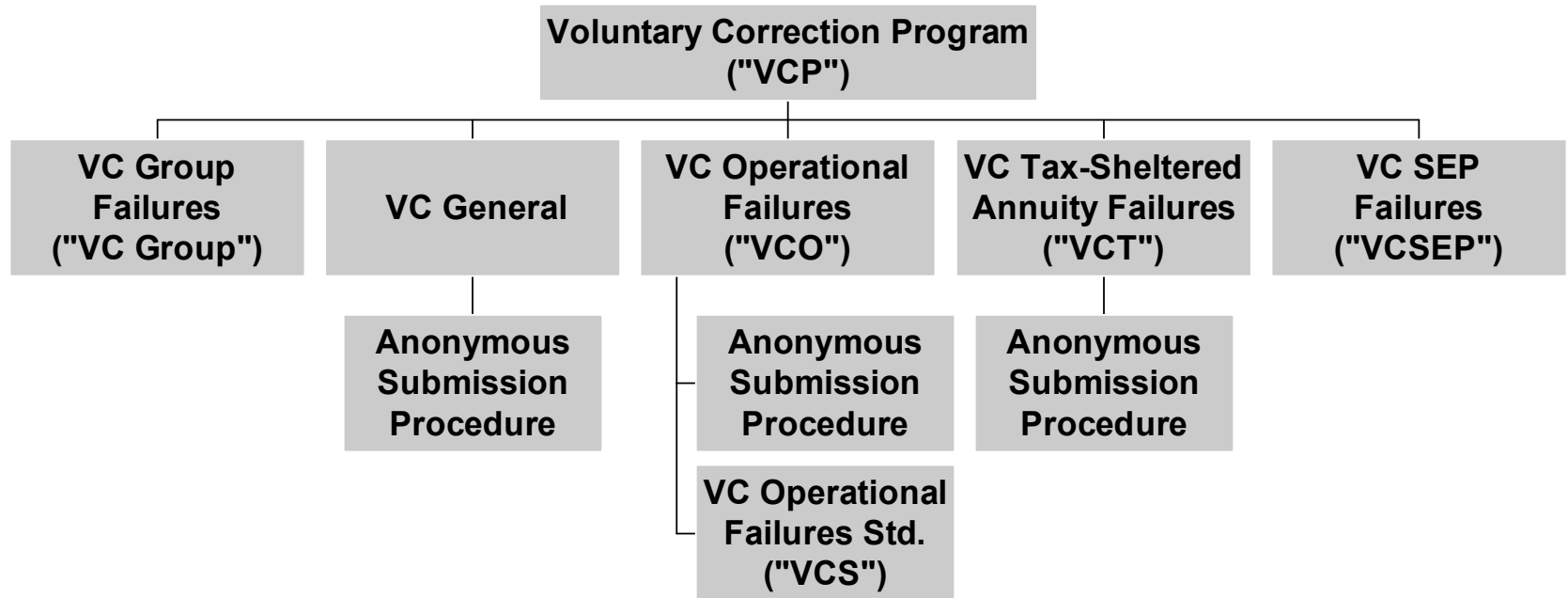
**Self-Correction Program
("SCP")**

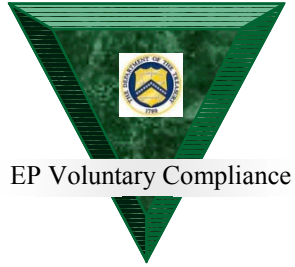
**Voluntary Correction Program
("VCP")**

**Audit Closing Agreement Program
("Audit CAP")**



Structure of VCP





Self-Correction Program ("SCP")



Applies to:

- 1. Operational Failures in Qualified Plans and 403(b) Plans**
- 2. Insignificant Operational Failures in SEPs**

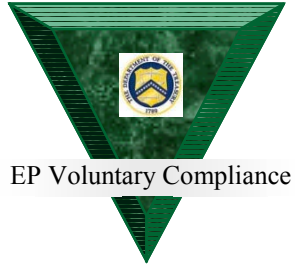


SCP (continued)



Available to correct:

- 1. Insignificant Operational Failures in Qualified Plans, 403(b) Plans, and SEPs, even if they are discovered on audit**
- 2. Significant Operational Failures in Qualified Plans and 403(b) Plans that are corrected within the applicable correction period (which generally expires at the end of the 2nd plan year following the plan year in which the Operational Failures occurred, unless extended by the special rules relating to Transferred Assets)**



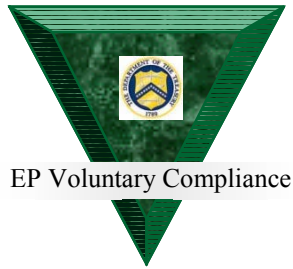
SCP (continued)

- **Correction methods described in Appendices A and B of Revenue Procedure 2002-47 are generally viewed as “safe-harbor” methods that may be used to resolve eligible Operational Failures through SCP**



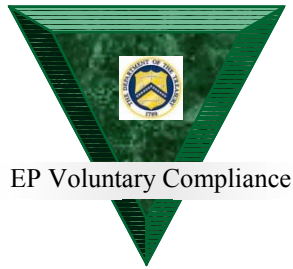
Voluntary Correction Program

- **Applies to Qualified Plans**
- **Voluntary correction of failures - requires Service approval and the payment of a fee**
- **For VC General, VCO, and VCT requests, if the plan received Transferred Assets and no new incidents of the failure occurred after the end of the 2nd plan year beginning after the corporate merger, acquisition, or other similar employer transaction, for purposes of determining the fee range, the Plan Sponsor may calculate plan assets and plan participants based on Form 5500 information that would have been filed for the plan year that includes the employer transaction if the Transferred Assets were maintained as a separate plan**



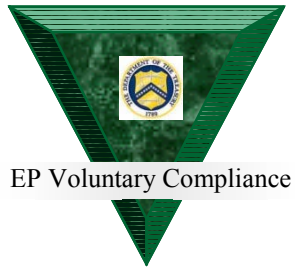
Voluntary Correction Program - general procedures (“VC General”)

- **Available to correct:**
 - 1. Plan Document Failures, Demographic Failures, and Employer Eligibility Failures**
 - 2. Egregious failures**
- **Favorable Letter is not required for eligibility**
- **Fee associated with a VC General request:**
 - 1. Negotiated within a range that is based on the size of the plan**
 - 2. Generally submitted at the end of the VC General process**



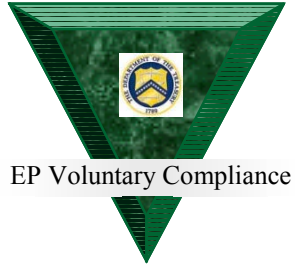
Voluntary Correction of Operational Failures (“VCO”)

- **Special procedure under VCP - applies to Qualified Plans**
- **Available to correct only non-egregious Operational Failures**
- **Favorable Letter is required for eligibility**
- **Fixed fee associated with a VCO request:**
 - 1. Based on the size of the plan**
 - 2. Submitted at the beginning of the VCO process (with the initial request)**



Voluntary Correction of Operational Failures Standardized (“VCS”)

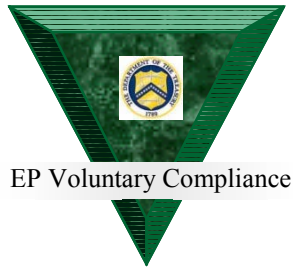
- **Streamlined procedure under VCO - applies to Qualified Plans**
- **Plan Sponsor agrees to correct failures using applicable, pre-approved correction methods in exchange for expedited processing and a reduced fee**
- **Available to correct up to two Operational Failures described in Appendices A and B of Revenue Procedure 2002-47**



VCS (continued)

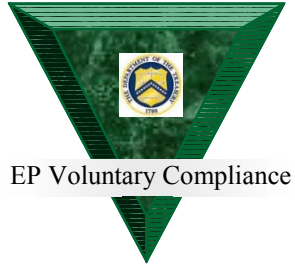
- **Fixed fee associated with a VCS request:**
 - 1. Fixed at \$350 per plan**
 - 2. Submitted at the beginning of the VCS process (with the initial request)**

- **Correction methods approved for use in VCS are limited to those described in Appendices A and B of Revenue Procedure 2002-47**



Voluntary Correction of Tax-sheltered Annuity Failures (“VCT”)

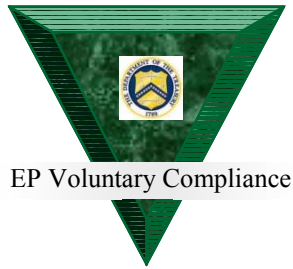
- **Special procedure under VCP - applies to 403(b) Plans**
- **Available to correct Operational Failures, Demographic Failures, and Employer Eligibility Failures**
- **Fee associated with a VCT request:**
 - 1. Negotiated within a range that is based on the number of employees and the number and type of 403(b) Failures**
 - 2. Generally submitted at the end of the VCT process**



VCT

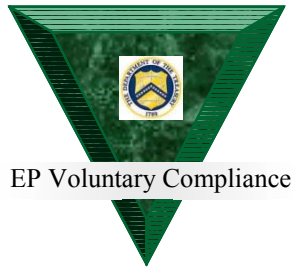
(continued)

- **Correction of 403(b) Failures:**
 - 1. Section 6.03 of Revenue Procedure 2002-47 provides general guidance with respect to the “Correction of an Employer Eligibility Failure”**
 - 2. Section 6.05(2) of Revenue Procedure 2002-47 provides general guidance with respect to the “Treatment of Excess Amounts under 403(b) Plans”**



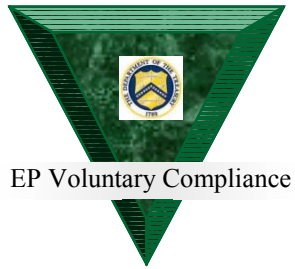
Voluntary Correction of Group Failures (“VCGroup”)

- **Special procedure under VCP - applies to Qualified Plans and 403(b) Plans - instituted on a provisional basis**
- **Permits Eligible Organizations (such as third party administrators and sponsors of master or prototype plans) to submit requests on behalf of their clients in order to resolve failures caused by systemic errors involving the Eligible Organization that affects at least 20 plans and results in corrections to at least 20 plans**



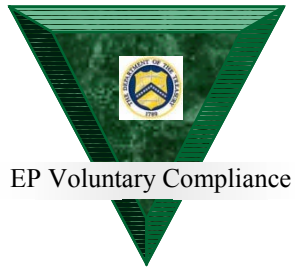
VCGroup (continued)

- **Available to correct Plan Document Failures and Operational Failures identified by the Eligible Organization**
- **Fee associated with a VCGroup request:**
 - 1. Based on the number of plans affected by the failures and the correction methods used in resolving the failures**
 - 2. Broken into two payments - one at the beginning of the VCGroup process (with the initial request), and one at the end of the VCGroup process**



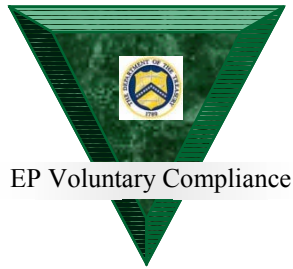
Voluntary Correction of SEP Failures ("VCSEP")

- **Special procedure under VCP - applies to SEPs**
- **Available to correct failures to satisfy the requirements of Code section 408(k), including failures relating to SARSEPs, such as failures to satisfy the 50%-eligible-employees election requirement under Code section 408(k)(6)(A)(ii) and the 25-employee limit under Code section 408(k)(6)(B)**



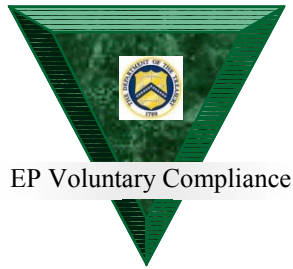
VCSEP (continued)

- **Fee associated with a VCSEP request:**
 - 1. Based on the size of the plan**
 - 2. Submitted at the beginning of the VCSEP process (with the initial request)**
 - 3. Depending on the failure(s) and/or the correction method(s), an addition to the Compliance Fee may be due**



Anonymous Submission Procedure

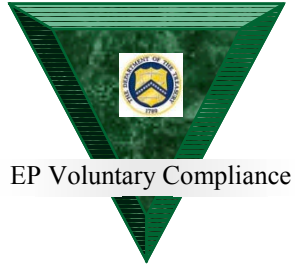
- **Special procedure under VCP - applies to Qualified Plans and/or 403(b) Plans**
- **Permits a Plan Sponsor to submit an anonymous request under VC General, VCO, VCT, VCGroup, or VCSEP**
- **Plan Sponsor remains anonymous until all elements of the Compliance Statement have been negotiated**



Anonymous Submission Procedure (continued)

- **A plan is not eligible to submit under the Anonymous Submission Procedure if the plan or the Plan Sponsor is Under Examination**

- **Fee associated with a request submitted under the Anonymous Submission Procedure:**
 - 1. Based on applicable VC General, VCO, or VCT fee guidelines**
 - 2. Broken into two payments - a nonrefundable payment at the beginning of the process (with the initial request), and a second payment at the end of the process, if applicable**



Anonymous Submission Procedure (continued)

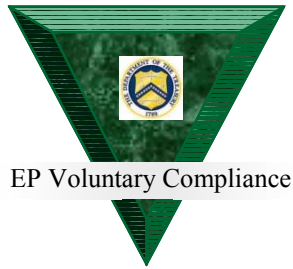
- **Submission under the Anonymous Submission Procedure does not preclude or impede an examination of the Plan Sponsor or the plan before the date on which identifying information is provided to the Service**



Audit Closing Agreement Program (“Audit CAP”)

- **Correction of failures discovered on audit - requires Service approval and the payment of a negotiated sanction**

- **Available to correct:**
 - 1. Plan Document Failures, Demographic Failures, and Employer Eligibility Failures**
 - 2. Significant (including egregious) Operational Failures that are not eligible for resolution under SCP**



Audit CAP (continued)

- **Sanction associated with a closing agreement under Audit CAP:**
 - 1. Usually a negotiated percentage of the total tax that could be collected upon plan disqualification**
 - 2. Submitted at the end of the Audit CAP process**
 - 3. If the exam involves a plan with Transferred Assets and no new incidents of the failure occurred after the end of the 2nd year beginning after the corporate merger, acquisition, or other similar employer transaction, the sanction will not exceed the sanction that would apply if the Transferred Assets were maintained as a separate plan**



EPCRS' Uniform Correction Principles

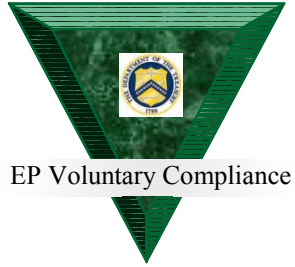
In general, failures must be corrected for all participants and/or beneficiaries and for all taxable years (whether or not the statute of limitations for one or more of the taxable years has expired)

- The correction method should restore the plan to the position that it would have been in had the failure not occurred**
- Where more than one correction method is available to correct a particular type of Operational Failure for a plan year, the correction method should be applied consistently in correcting all Operational Failures of that type for that plan year**



EPCRS' Uniform Correction Principles (continued)

- **The correction method should be “reasonable and appropriate.” In general terms, this means that the correction method should:**
 - 1. Resemble one already provided for in the Code, the Income Tax Regulations, etc., to the extent possible**
 - 2. Provide benefits for nonhighly compensated employees (with respect to Qualification Failures relating to nondiscrimination)**



EPCRS' Uniform Correction Principles (continued)

- 3. Keep plan assets in the plan, except to the extent that the Code, the Income Tax Regulations, etc. provides for correction by distribution to participants or by the return of assets to the Plan Sponsor**
- 4. Not violate another applicable specific requirement of Code section 401(a)**



EP Voluntary Compliance

EPCRS' Applicability

CORRECTION TYPE	QUALIFIED PLANS	403(b) PLANS	SEPs
Self-correction – no Service approval and no fee/sanction	SCP	SCP	SCP, but only for insignificant Operational Failures
Voluntary correction – requires Service approval and payment of fee	VC General, VCO, VCS, & VCGroup	VCT & VCGroup	VCSEP
Correction on audit – requires Service approval and payment of sanction	Audit CAP	Audit CAP	Audit CAP